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## Judiciary Committee

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### SB 5849

**Title:** An act relating to estates and trusts.

**Brief Description:** Concerning estates and trusts.

**Sponsors:** Senators Prentice and Parlette.

<p style="text-align: center;"><b>Brief Summary of Bill</b></p> <ul style="list-style-type: none"><li>• Amends the method for interpreting certain wills and trusts that use formulas or terms tied to federal estate and generation skipping-transfer taxes during the 2010 tax year.</li></ul>
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**Hearing Date:** 3/14/11

**Staff:** Kelly Pfundheller (786-7289).

**Background:**

In 2010 the Legislature passed Substitute Senate Bill 6831 in response to a temporary change in the federal law relating to estate and generation skipping-transfer (GST) taxes. The bill addressed the issues arising in the estates of decedents who died during the 2010 tax year. Many wills and trusts describe gifts in terms of federal estate and GST tax exemption amounts or other formulas tied to the federal estate and GST taxes; however, since the federal estate and GST taxes were repealed during 2010, some of the formulas used in wills and trusts would not function to fund estate or trust plans as a decedent had intended.

Substitute Senate Bill 6831 created a method to address wills and trusts that use formulas or terms tied to federal estate and GST taxes. A will or trust of a decedent who died during the 2010 tax year is deemed to refer to the federal estate and GST tax laws as they applied on December 31, 2009 if the will or trust:

- contains a formula referring to certain tax terms;
- measures a share of an estate or trust based on the amount that can pass free of federal estate or GST taxes; or

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- is otherwise based on a similar provision of federal estate or GST tax laws.

If the estate and GST taxes became effective before January 1, 2011, then the separate method of interpretation no longer applies.

A personal representative, trustee, or any affected beneficiary under a will or trust may bring a proceeding under the Trust and Estate Dispute Resolution Act (TEDRA) to determine whether the decedent intended for certain references to be construed with respect to the federal law as it existed after December 31, 2009. The proceeding must be commenced within 12 months following the death of the decedent.

Current law also provides that a beneficiary in a will or trust may bring a qualified disclaimer of property passing from an estate of a decedent, which means that a person refuses to accept an interest in property so that he or she can avoid having to pay estate or gift taxes. The disclaimer must be delivered or mailed by nine months after the latest of: (1) the date the beneficiary turns 21 years of age; (2) the date of the transfer; or (3) the date that the beneficiary is finally ascertained and the beneficiary's interest is indefeasibly vested.

On December 17, 2010, Congress retroactively reenacted the estate and GST taxes provisions to the 2010 tax year. At the same time, Congress increased the federal estate tax exemption from \$3.5 million to \$5 million, which is also retroactive for the 2010 tax year. As a result, for decedents who died between December 31, 2009 and December 18, 2010, it may not be clear if the formula clauses used in wills and trusts would result in a presumed exemption amount of \$3.5 million (the 2009 exemption) or \$5 million (the retroactive 2010 exemption).

#### **Summary of Bill:**

The bill makes changes to the law of trusts and estates in relation to wills and trusts of decedents who died between December 31, 2009 and December 18, 2010.

A personal representative, trustee, or affected beneficiary may, when bringing an action under the TEDRA, introduce extrinsic evidence in order to determine a decedent's intent regarding a formula clause based on the federal estate or GST tax exemptions, regardless of whether the governing instrument is ambiguous. The time limit for bringing an action is increased to two years following the death of the decedent.

The time to make a qualified disclaimer of property passing from an estate of a decedent who died after between December 31, 2009 and December 18, 2010 is extended to nine months after December 17, 2010.

The bill is retroactive to December 31, 2009. The bill is remedial in nature and must be applied and construed liberally.

If any provision of the bill or its application to any person or circumstance is held invalid, the remainder of the bill or the application of the provision or other persons or circumstances is not affected.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.